

REMARKS

Summary Of The Office Action & Formalities

Claims 1-8 and 10-25 are all the claims pending in the application.

The Examiner has entered the certified translation of Applicant's priority document, but states that reference to this priority document is not mentioned in the December 22, 2004 remarks. Applicant notes that such reference is made at page 8 of the December 22 response.

Claims 24 and 25 are rejected under 35 U.S.C. § 112, first paragraph, for the reason set forth at page 2 of the Office Action.

Claims 1-8 and 10-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lina et al. (US 5,190,192) in view of Brakarz et al. (US 5,323,933) and Schneider (US 4,949,876), as evidenced by Dobbs et al. (US 5,785,208).

Applicant respectfully traverses.

Claim Rejections - 35 U.S.C. § 112(1)

Claims 24 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not give a certain definition to "dead stroke." Furthermore, there is no indication in the original disclosure that during the "initial dead stroke," there is no pressure increase in the dispensing member and no fluid/product expulsion from the dispensing member.

Office Action at page 2. Applicant respectfully disagrees.

As set forth in the Manual of Patent Examining Procedure (“MPEP”), “[t]he analysis of whether the specification complies with the written description requirement calls for the examiner to compare the scope of the claim with the scope of the description to determine whether applicant has demonstrated possession of the claimed invention. Such a review is conducted from the standpoint of one of skill in the art at the time the application was filed (see, e.g., Wang Labs. v. Toshiba Corp., 993 F.2d 858, 865, 26 USPQ2d 1767, 1774 (Fed. Cir. 1993)) and should include a determination of the field of the invention and the level of skill and knowledge in the art.” MPEP Section 2163.

Applicant has explained from the beginning of the prosecution the proper meaning of dead stroke disclosed in the present application as understood by one of ordinary skill in the art. Applicant has made it clear that during the dead stroke there is no compressibility of fluid and there is no fluid expulsion until after the dead stroke during regular operation of the pump. Applicant’s specification provides explicit support for this feature. For example, Applicant’s specification discloses in one embodiment that “the pump 20 preferably has an initial dead stroke so that fluid expulsion starts only after said dead stroke, when the dispensing orifice 31 is situated facing the opening 42” (*see* specification at page 5). Moreover, in the last paragraph of the same page, the specification explains the problems of oxidation of the fluid, etc. One skilled in the art would understand that the dead stroke does not refer to an initial priming operation. Also, the term “dead stroke” is self-explanatory, since the word “dead” indicates that nothing happens. Therefore, it would be abundantly clear to one skilled in the art that the Applicant possessed the claimed invention.

Accordingly, the Examiner is kindly requested to carefully reconsider and withdraw this rejection.

Claim Rejections - 35 U.S.C. § 103

Claims 1-8 And 10-23 Over Lina et al. (US 5,190,192) In View Of Brakarz et al. (US 5,323,933) And Schneider (US 4,949,876), As Evidenced By Dobbs et al. (US 5,785,208).

The Examiner maintains the rejection of claims 1-8 and 10-23 over Lina et al. (US 5,190,192) in view of Brakarz et al. (US 5,323,933) and Schneider (US 4,949,876), as evidenced by Dobbs et al. (US 5,785,208). Responding to Applicant's last arguments, the Examiner states:

Applicant's arguments filed 7 October 2005 have been fully considered but they are not persuasive. In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Applicant argues that Lina et al. do not disclose that the pump has an initial dead stroke where the actuation of the pump starts only after the dispensing head has traveled over the dead stroke. However, Lina et al.'s pump must go through a stroke in order to be primed. Dispensing does not begin until after this stroke. Applicant's pump structure is identical to Lina et al.'s pump. The disclosure of the Application does not explain or show what physical differences lead to a different performance in Applicant's pump. Also, the disclosure does not define a dead stroke and does not imply that a dead stroke is different from the dead stroke in Lina et al. Lines 54-66 of column 16 of Hargraves et al. (US 6,013,270) and line 65 of column 7 to line 10 of column 8 of Privas (US 5,417,258) support the definition of a "dead stroke" as being the initial stroke that reduces the volume of the pump chamber before fluid is sucked into the fluid chamber. Since there is no fluid in the chamber, no fluid is dispensed during this stroke. The pump of Privas, as shown in Figure 3, is identical to the pump of the Application and the pump of Lina et al. In light of the

specification and the normal usage of the term "dead stroke," Lina et al. discloses a pump including an initial dead stroke.

Office Action at pages 5-6. Applicant respectfully disagrees.

The grounds of rejection are based on an improper definition of dead stroke as including the initial stroke for priming the pump. Moreover, the grounds of rejection ignore the explicit language in claim 15, for example, that requires the dead stroke for "each time the dispenser head moves from the rest position to the dispensing position during operation of the device."

According to an embodiment disclosed in Applicant's specification, after that dead stroke, the pump acts like a classical precompression pump. An important difference, therefore, is that at the beginning of the actuating stroke, there is provided the recited dead stroke.

The actuating stroke of a precompression pump is determined such that at the beginning, the pump chamber is isolated (closing of inlet valve). Pressure is then increased on piston up to the opening of the outlet valve, providing expulsion with pressure.

The structural difference in the pump as claimed is that the actuating stroke is made slightly longer (for the same dose), such that, at the beginning, nothing happens. It is only when the dead stroke has been completed that the precompression pump starts to operate.

The grounds of rejection considers that the priming phase in the pump disclosed in Lina et al. to include a dead stroke. That is not correct, as during the priming phase, the pump chamber also becomes isolated at the very beginning of the actuating stroke (closing of the inlet valve). There is then an immediate pressure increase inside the pump chamber. A stroke is possible only because air is compressible. However, this is not a dead stroke, where nothing happens.

In any case, after priming, when the air is replaced by liquid, the pump disclosed in Lina et al. does not provide any dead stroke before actuation of the precompression pump, even under the Examiner's interpretation of this language.

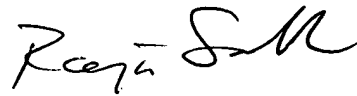
In view of the foregoing, the Examiner is kindly requested to reconsider and withdraw the rejection.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

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CUSTOMER NUMBER

Raja Saliba
Registration No. 43,078

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